

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and
ROSLYN WOODARD SMITH,
Individually and as Administrators of
The ESTATE OF HARRY SMITH, III,

Plaintiffs,

v.

CIVIL ACTION NO. 04-1254-GMS

CITY OF WILMINGTON,

JOHN CIRITELLA, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

THOMAS DEMPSEY, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department, and

MATTHEW KURTEN, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

Defendants.

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO CONTINUE THE TRIAL**

Plaintiffs, by their counsel, hereby respectfully oppose Defendants' motion to continue the trial because of the unavailability of one of their expert witnesses.

Plaintiffs are willing to do any of the following:

1) allow Defendants to file as an exhibit, to be admitted at trial without objection, the vast majority (and perhaps all) of the complete lengthy two-part report prepared by the unavailable expert and which has already been given to Plaintiffs' counsel; or

2) allow Defendants to identify another expert in this same field or area of expertise, as long as this new expert is identified, his report is provided to Plaintiffs' counsel within one week of the trial, and he or she is available for deposition within three days of the scheduled November 6, 2006 trial; or

3) if the currently unavailable expert becomes available for deposition within one week of the trial, to depose him via videotape and show this videotaped deposition to the jury at the trial.

Plaintiffs object to the trial being postponed because the date the unavailable expert might be available is uncertain, this wrongful death litigation (as long as it is pending) is placing an incredible emotional strain upon the Smith family, and some of the other witnesses the parties want to testify might become unavailable as time passes, particularly some of the lay witnesses Plaintiffs intend to call.

Respectfully submitted this 30th day of September 2006.

s/Anne T. Sulton
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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2006, I electronically filed the foregoing with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following e-mail address:

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